

“THE UNFAIR COMPETITION IN THE LEGAL SYSTEM OF IRAN”

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Abstract: This article is written in response to the question of what is the meaning of unfair competition in legal system of Iran. And on what legal resources it is documented. While explaining the concept of the unfair competition, according to the legal documents and the opinions of the law scholars; The boundaries of this concept has explained similar subjects in Iran's legislation and legal documents related to the unfair competition has been reckoned and has concluded so as to create the necessities of a fair trade and competition and the application of fair theories of law in Iran it is needed to explain this issue under this particularly unfair competition legislation.

1. INTRODUCTION

Unfair competition is any competition contrary to the principles of integrity in the trade and industry. Unfair competition rights are derived from the coexistence model of ethics, law and economics. Sometimes the knowledge of rights of economic entities is explored from the ethical point of view and some other time economic doctrines and theories about the role of ethics in economic development and the creation of legal doctrine are to be effective. Unfair competition in its history transition from a simple and straightforward concept, which was considered as part of the intellectual property rights, gradually is becoming transformed into an independent legal entity that in Iranian legal system the knowledge on the manner and the insurance of its implementation is very low. At first the unfair competition was a sub-category concept of intellectual property which was referred to overcome the shortcomings of intellectual property rights and the application of the theory in support of consumer rights have

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brought some changes in its doctrine and finally has been considered as a source of law taken from the concept of free is to create new rights for which no explanation and correct understanding of the current state of Iran's rights is available. Unfair competition is included among the country's internal law and there is no valid research on the manner and the nature and its implementation guarantee with regard to Iran's domestic law and the majority of studies related is about the translation of Paris Convention and interpretation of other countries commentators on the meaning and scope of the convention and the issue has been investigated less as unfair competition with an understanding of legal rights of Iran as the subject of research. What does unfair competition on the Iranian indigenous mean? And based on what legal resource is documented? There have been brief questions that this article was due to be written about. The answer to this question in accordance of which first briefly the law of unfair competition has been explained (first Paragraph) and then in the second paragraph some examples of Iran's rights has been stated; and in the third article, the difference between the concept of similar Iranian law has been explained and then legal sources in this regard has been recognized. (Paragraph IV)

1. BRIEF INTRODUCTION OF IRAN UNFAIR COMPETITION CONCEPT

Literary analysis and terminology of the basic concepts of research is needed to advance this research in a logical way. Here only a brief introduction to the subject of the concept and literally conventional definition of the term of which is known is explained. The keyword (unfair competition) is a predicate in English based on requirements of which different interpretations have been put in various language translations and so in terms of the legal documents of Iran; it has been translated as the three following phrases; "insidious competition", "the illegitimate business competition" and "inconvenient competition." If the meaning of the word (unfair) is analyzed as insidious, this phrase refers to the competition that will be accompanied by ill will that is under Article 244 of the old the General Penal Code for which it had been stipulated a penalty as enforcement provision. The illegitimate competition, according to the meaning it has in the legal doctrine of Iran of the term as "unlawful", it is a competition against the law or an unlawful competitive tool and the translation of the phrase as unfair competition is wrong. In the following article, the term "unfair competition" which is more general and has broader sense has been used in accordance with English law phrase signified in the original countries of these rights. However, the idiomatic meaning of the terms in Iran's rights as the unfair competition, insidious competition, and the illegitimate competition has the same meanings. The doctor Langroodi has defined the illegitimate competition as "the illegitimate competition act or acts that a person such as a doctor or a businessman or industrialist does to disperse and attract client around of the person with whom he is a colleague is considered to be committed as dishonorable and irrational." (Langroodi, *The Law Terminology*, p. 338) He has defined the insidious competition as "the insidious competition is a weak translation of signified illegal commerce competition which is

subject of the reference in Article 242 of the Criminal Code." (Langroodi, *Terminology of Law*, p. 338) Legal Iran law documents relating to this definition, is reformation of the public Penal Code Act approved in 1310 and the Paris Convention for industrial property. The reformation to Article 244 the public Penal Code defines unfair competition as: "the insidious competition is that the merchant to stop people from buying or using the same goods as yours by providing fake evidence or false propositions in whole or by any other fraudulent means resort directly or indirectly, implicitly or explicitly seek to show the goods as defective or poor" and the frequent Article 10 of the Paris Convention is defined as: "any competition contrary to normally honorable industrial or trade can be considered as the illegitimate competition." As a detailed definition it can be said briefly: "the unfair competition is any competition contrary to ethics, integrity, and common norms among merchants and artisans in the field of trade and industry."

2. INSTANCES OF IRAN UNFAIR COMPETITION LAW

There is no doubt that the common meaning of the words on the breadth and narrowness of their outcome issues is fundamental and methods of legal systems in order to remove ambiguity from general concepts on how to find examples of the concepts is essential. Reckoning all cases and instances of unfair competition law of Iran is not possible. Discrediting the rival, false statements about your business that cause your honorable rival's loss, false statements about the business competitor, the disclosure of the competitor trade secrets, selling goods at a price lower than the cost, creating ambiguity in the terms of trade along with factors such as the award of goods and giving false information as about how to calculate the price, are all examples of unfair competition presented. The most common examples of Iran's rights, examples of instances of unfair competition under the Paris Convention: False advertising, creating confusion and discrediting the competitor on acceptance of the Paris Convention by Iran law in the text of Article 9 of Iran the Civil Code is part of the internal civil, Article 9 of the Civil Code of Iran says that "the provisions of conventions, which according to the constitution is signed between Iran and other countries is the rule of law."

3. RECOGNITION OF UNFAIR COMPETITION FROM SIMILAR TITLES IN THE IRANIAN LAW

One of the methods to explain concepts is to state the similarities and differences with other legal concepts. The most important outcome of the application and verification of concepts is the meaningful implementation of the outcomes of the study about the issue and exposition of research boundaries and the limits, especially since without this comparative study to distinguish it from similar concepts it is likely that the researcher is subject to an error entering a subject that is similar to the fundamental subject of the research. In accordance with the above mentioned, the following is briefly differentiated law of unfair competition from similar concepts which have been explained.

3.1. The Unfair Competition Law of Iran Distinct from Competition Law

The competition law in European terms which is called in the United States as the antitrust law is one of the other similar areas, different and overlapping with unfair competition law. The meaning and purpose of unfair competition with the meaning and purpose of competition law is quite distinct, whereas competition law is the law to encourage competition. Unfair competition law and is the law for the purpose of making the competition fair and its moral health. The competition law prohibits the abuse of the dominant market situation, integration, horizontal and vertical agreements to fix prices to fight antitrust on the market to create competition, but fair competition law responsible to fight against dishonorable competition. Although from the perspective of competition law on unfair competition law takes precedence because, in an exclusive monopoly market where there is no competition to be fair is meaningless.

It must be acknowledged that competition law is concerned with unfair competition law to the extent that in some countries the legal authorities related to antitrust law, in part address specifically the rights issues of unfair competition. For example, Italy, Hungary, Estonia and FTC in the United States have this condition. (Frauke Henning-Bodewig, 2006, p: 7) Antitrust law is a set of rules created to aim at preventing anti-competitive practices and acts of anti-competitive practices are the kind of practices challenging the structure creating the competition. (Hilty, 2007, p: 6) and fair competition law that are complimentary to antitrust law undertake guarantee of safety, efficiency and fairness of the market. (Roiger, 2006, p: 3).

In Iran law, the legal source of competition rules is "Chapter Nine of the Law on reformation Bill of the 4th Social and Cultural Development Plan of the Islamic Republic of Iran and the implementation of the general policies of Article 44 of the constitution." That the law does not mention the general unfair competition; however, some examples of provisions of the law are applicable to some interpretations of the meaning of unfair competition that in our opinion this evidence only exists where the law is unfair competition will cause the dominant condition in the market.

3-2. Unfair Competition in Iran Law Not Associated with Unfair Practices of Commercial Rights

The prohibition of unfair commercial practices is another legal symbol that the issue has dealt with the ethics in business for the economic growth and development. Defining boundaries of unfair competition from unfair trade is very difficult and sometimes impossible. But in short we can say that law associated with unfair commercial practices related to fair trade and unfair competition law is about unfair competition. This distinction can not be considered an accurate separation because some experts of unfair trade practices believe that the use of unfair trade practices of law will result in unfair competition (Dennis Campbell, Susan Cotter, 1997, p: 1) to make it clear: European Union directive No. 2005/ 29 on the unfair commercial practices

in the internal market in the European commercial law unfair practices has been preliminary. And British law "the instructions 2008 on consumer protection against unfair trade,"⁵ the British government commitments to be implemented has been developed under the aforementioned law. British law does not consider this directive about unfair competition (Davis, 2007, p: 186-187)-the instructions have been modified in 2014-while in Germany law exactly all the concepts used in these instructions German law⁶ against unfair competition is used. According to section 2 of the 2008 guidelines on consumer protection against unfair trade practices unfair trade is banned in the UK government. And a commercial practice is unfair if it is contrary to the requirements of a professional effort and is likely to cause deviation of the average behavior of consumers, (part.2, paragraph 3), and also a commercial practice is unfair when the action is misleading or leaving the action is deceptive or the practice is an aggressive action or listed as attachments of instructions. (Part. 2, paragraph 4). This structure is the same structure that trade laws against unfair competition in Germany, Austria and Sweden have introduced. There are different explanations of unfair commercial practices in European countries law. In the law of Iran unfair competition is not related to unfair business practices.

3-3. The Unfair Competition in Iran Law is Different from the Competition in Violation of the Law

Sometimes competition for ethical reasons and dignity is prohibited on stipulated law that unfair competition and sometimes competitions are unfair prohibited by law stipulated based on other factors, including other forms of illegal competition. In Iran law Article 133 of the Commercial Code reform bill passed in 1347 could be as part of the prohibited competition which is not considered as insidious forms of competition. It says: "The directors and the managing director cannot get involved in any kind of trading, such as company trading that guarantee competition with the operations of the company. Any manager who violates the provisions of this Article and his violation shall be liable to cause the company's losses will be responsible to compensate. The loss in this article is either damage or enhancing the interest "in the case of civil liability for damages caused by prohibited competition is just proved enough to claim the fulfillment of competition but in the case of civil liability arising from insidious competition in its addition to the proof of realization of competition should also be asked for proof by the person seeking the case.

3-4. The Law of Unfair Competition in Iran is Different from the competition against the Law of Contract

A person may be committed under a contract not to have competition with the other. For example, a tenant in the property lease agreement provided that the landlord or his deputy after the end of the lease not to let the same business rental property. Some forms of unfair competition arise from the contract, for example: One of the unfair competitions is inciting others to breach of contract, which this action occurs in the

following cases: 1-The consumer is stimulated that his contract he signed with the contractor to be broken and sign a new contract. 2- To gain benefit for him or another cause, or suggest that workers or competing agents or employers act contrary to their duties in the service. 3- Agents incite rival employees to treason or seeking professional secrets and commercial and industrial secrets of administrators or agents. In one of the cases in France, because the competitor company had hired a former employee of that company knowing that in his employment contract him there was the conditional state of lack of competition was performing Civil liability lawsuit against the company. Court of Appeal while arguing that it has not been proven that employees continue to work for forty-two days caused the loss of the competitor has rejected the demand for compensation. The Chamber of Commerce Court of France in the vote of Oct. 19, 2001 with the argument that "It is called an unhealthy competition that in practice necessarily disrupts the business", the vote is violated. (Badiny, 1391, p. 61). In some cases, people to achieve professional secrets of the competitor try to make a contract or preliminary negotiations to make their contract by means of the contract committed unfair competition by exposing their secrets. Unlike competitive contract, unfair competition is different, although sometimes neglect or breach of non-competition agreement could constitute unfair competition. For the realization of civil liability arising from competition contrary to contract only proving condition and breach of non-competition commitment is sufficient. But the realization of the civil liability of unfair competition requires the proof of being unfair competition because the civil liability coming from breach of competition contract is a civil liability contract but civil liability arising from an insidious competition is a non-contractual liability. According to the contrary concept of Article 959 of the Civil Code of Iran and that Iranian lawyers know it possible to deviate the civil rights to certain and minor cases (Katoozian, 1391, Civil Code in the current legal order, p. 596) the condition brought in the competition law in regard to time, place and specific trade is correct.

4. THE LEGAL SOURCES IN THE LAW OF IRAN UNFAIR COMPETITION

To identify the elements of the claim of Iran law of unfair competition, it is necessary to reckon induction in the subject of legal resources.

4.1. Reformation of Article 244 and Article 249 of the Penal Code of 1304

The Reformation to Article 244 and 249 of the General Penal Code passed in 1304 has provided the first definition of unfair competition in the law of Iran and used for it the stipulated punishment the provision of enforcement. In this Act, the term "insidious competition" is used. Basically, the term mentioned refers to the acts of committed on the ill will intention and other criminal acts are which lacks this element can not be called insidious competition. The two Articles 244 and 249 of the General Penal Code refers to the two aspects of the insidious competition. The Article 244 is defined by the expression of true insidious competition and Article 249 is related to the people who use the reputation of other vendors' trademarks to sell their goods. And in the current

penal code not any of these items are included. Article 729 of the Islamic Penal Code adopted in 1375 abolished all the laws contrary to the law declared. Some judges by arguing that the Islamic Penal Code, adopted in 1375 and not necessarily negatively or positively expressed no opinion in regard to insidious competition. To punish the users of insidious ways refer to Articles 244 and 249 of the Public Penal Code. But this possibility terminated with the reformation of the Article 729 that expressly disapproved the former Public Penal Code. However, despite the termination provisions of the General Penal Code still the content to understand the meaning of insidious competition in Iran law is applicable.

4.2. The Provisions of the Frequent Article 10 and the Third of the Paris Convention

Implementation of the provisions of the frequent Article 10 of the Paris Convention on the law of Iran the "The law of accession of the Iranian government the Public International Union known as the Paris for the Protection of the industrial property, business and agriculture approved on 14th of Esfand in 1337. " Accordingly Iran law joined the Lisbon changes in 1958. The frequent Article 10 of the Paris Convention at the time was translated as follows: "1. Member States are required to provide supporting the Real Union citizens against the illegitimate competition (insidious competition); 2. Each competition done contrary to honest industrial or trade normally should be considered as the illegitimate competition; 3. In particular, the following actions shall be prohibited: First, any action that creates the misunderstanding, in one way or another, in the institution or industrial activity or commercial products of the competitor: The second, specifications or statements in the commercial use that cause public confusion regarding the nature, mode of manufacture, distinguishing product characteristics, ability to use or quantity of the goods. "The third Article of 10 also says: " 1. The Union Member States are required to provide the appropriate legal consult means to prevent all acts effectively under Articles 9, 10 and the frequently 10 in regard to citizens of other Union Member States. 2. In addition, they are required to predict measures that the syndicates and unions that have been established according to the law of their country and their representatives of industrialists and manufacturers or traders concerned are allowed to prevent enforcement of 9-10 and the frequent 10 in the court or administration of justice to the extent that regulations in the country where supporting is claimed and will allow Syndicates and unions of that country to act." (the official newspaper of Iran, 1348).

In France generally the competition that is against the law is called illegitimate competition and there is a distinction between the insidious competition and the illegitimate competition. But in other legal systems the phrase like «unfair competition», which corresponds to «unfair competition», is used. On the Convention translation of the English words and French phrase "conurrence déloyale" the expressions like "insidious competition" and "the illegitimate competition" are used. In fact, one of the issues that have occupied the minds of the commentators of the Convention is that interpretation of the Paris Convention should be based on the principles of linguistics of which language? Article 3 of the Convention introduced the two principles for the

interpretation: 1. Goodwill: 2. the conventional meaning of phrases and their subject and purpose (Waldow, 2002, P: 7) in Paris Convention text in Stockholm changes was in French, and in France the term "insidious competition" is more adaptable with the necessities of French law. In Lisbon changes, the secretariat of the Convention were allowed to offer the official translation of the Convention into Other languages, including English with respect to the protection that in case of any discrepancy of the French translation, the dominant text is considered. (Waldow, 2002, p: 9) According to English commentators acknowledge the word «Unfair» is not a suitable equivalent to French word «déloyale». The French word refers to the unethical and fraudulent nature of competition and the unequal term refers allusively to inequality of trade and competition in English. (Waldow, 2002, p: 8) Due to the lack of unfair competition law of Iran, the indigenous and unfair competition have been translated in various ways and the terms of unfair competition and insidious competition is the illegitimate competition are used. However, it is important whether to accept the "insidious competition" or accept "unfair competition", in the meaning of the Paris Convention the competition is a competition contrary to the dignity, but the term "the illegitimate competition" considering the literal meaning is not applicable.

4.3. The Law Protection of Geographical Indications

The protection law of geographical indications is one of cited laws about the unfair competition in the Iran law. Article 2 of the law states "any person or group being beneficiary in regard to geographical indications can bring the claim in a court for the following actions or losses arising from the proceedings: A. introducing and attributing unreal and misleading geographical origin of goods; B. any use of geographical indications of goods in accordance with Article (frequent 10) of the Paris Convention that applies to the illegitimate competition." Referring to the provisions of frequent Article 10 of the Paris Convention with regard to the meaning of the term "the illegitimate competition" in this article is the same as "insidious competition" and "unfair competition". But Paris law documentation to provisions of the Convention was wrong. Note that it was suggested in Lisbon that with the use of misleading indications, the source is stated as one of the unfair competition cases met the American delegation resistance. Therefore, this section was not accepted as one of the unfair competition meanings indicated in Paris Convention (Frauke Henning-Bodewig, 2006, p: 19) Hence the reference of this article to the provisions of frequent Article 10 of the Paris Convention is an error. At the same time the use of unreal indication of origin is considered as unfair competition and it has been added in the proposed World Intellectual Property Organization as an example of unfair competition.

4.4. The Accession Law of Iran Government to the Convention Establishing the World Intellectual Property Organization (WIPO) Approved in 04/07/1380

Paragraph 8 of Article 2 of the Convention establishing the World Intellectual Property Organization, which has been accepted by Iran, also knows the intellectual property

rights as protection against unfair competition included. The importance of this law underlying in a series of proposed World Trade Organization about unfair competition is that it can be accepted as legal doctrine of Iran law. In fact, as noted to eliminate unfair competition conceptual shortage, the International Bureau of the World Intellectual Property Organization plan the follow-up activities in regard to the unfair competition law in 1996. Based on the notes on Article 1, the paragraphs will be available to countries that are committed to implementing the provisions of the Convention under Article 2 of the Thrips Treaty of Paris. The proposed paragraphs by the World Intellectual Property Organization undoubtedly for the member states are not legally binding and it's an offer with no legal requirement and although it was at first had been proposed to the requirement of frequent Article 10 of the Paris Convention, but its scope is far beyond the provisions of the Convention. (Hilty, Reto M, 2007, p: 23-24) In this study, publications of (WIPO) related to unfair competition were accepted as legal doctrine.

4.5. E-Commerce Law

Another source of unfair competition law is e-commerce law in Iran. Article 66 of the e-commerce law states: "in order to support the legitimate and fair competition in the context of electronic transactions, the illegally obtained commercial and economic secrets of the institutions and companies for its institutions or to disclose it to third parties in the electronic environment is considered as committing a crime and it will be punished under the law." According to the legislative history of Iran literature on the meaning of the term "the illegitimate competition" in this article is as the same as unfair competition. Article 66 of this law is referring to one of the examples of unfair competition as "creating confusion in the rival trade". It is stated in this article: "In order to protect the rights of consumers and encourage legitimate competition in the field of electronic interchanges the use of trademarks as (Domain Name), or any (Online) display trademarks which cause deception or confusion in regard to the origin of goods and services is prohibited and violators will be punished under the law." Although the law is related to e-commerce but the major contents of unfair competition is related to intellectual property in the cyber area.

4.6. Other Cases

A number of laws specifically have addressed some issues and instances of unfair competition. As it will be noted, a wide range of Iran unfair competition is related to industrial property's Rights that is more related to creating ambiguity in the rival's trade and industry which is as an example of unfair competition related. In fact, the more the scope of the rules relating to intellectual property is developed the scope of referring to the concept of unfair competition as a complementary system of intellectual property decreases. However, some of the rules of intellectual property and unfair competition have earned overlapping scope areas with each other, some of which can be noted such as the "law of patents, industrial designs and trademarks." Article 46 of

this law states “the name or title whose nature or its use, is contrary to legal norms or public order or good morals or causes deception of the public or commercial centers in regard to the name or nature of an institution who has introduced it, can not be used as a brand mark.” This Article is the subject of uncertainty in the business of competing rival which is one of cases linked to the unfair competition recorded under the Paris Convention. The other issue related to unfair competition is the “false advertising”. The note 2 of Article 17 of the Trade Act is associated with this form of the unfair competition. The article says: “Trading People are not allowed to advertise trying to win customers about products, goods or services, as opposed to reality. Otherwise in accordance with Article 68 of this law will be dealt with. “In some of the rules the subject of discrediting the rival has been dealt with, including Article 8 of the law of civil liability. It expresses that “the person using publications and assertions that brought loss of a person’s credit, dignity and situation is ought to compensate it. Any person who by means of publication or other means contrary lost the good faith of customers or is about to be at risk the loss may ask to cease such operations and if proven guilty, ask for compensating damage.” Moreover, Article 1 of the law of unfair competition related to this article says: “any person who without any authorization intentionally or as a result of lack of caution cause damages to somebody’s health, property, dignity or business reputation or the right that is given to any person by means of law and bring his moral or financial loss is liable to compensate the loss as an outcome of his actions.”

5. CONCLUSION

On the Literature about unfair competition of Iran legal system, there are two definitions of unfair competition: the Public Penal Code has defined unfair competition as: “insidious competition is that the merchant to stop people from buying or using the same commodity as his commodity by making fake evidence or generally with resort to any false or fraudulent attributes or any means, directly or indirectly, implicitly or explicitly tried to show that the commodity is faulty or inferior.” The frequent Article 10 of the Paris Convention, for the definition says:

The competition conducted contrary to the normally honorable industrial or trade rout is to be considered the illegitimate competition.” But the law of the competition in Iran, makes a distinction between competition against the law and contrary to contract and competition law against unfair competition. What is certain is that the laws on unfair competition law of Iran are scattered and this legislation lacks the necessary amount of knowledge in order to be recognized as an independent legal field. In Iranian law, unfair competition in general, as a complement to the concept is used for the implementation of moral property rules; In addition, the literature in the field of unfair competition with regard to the effect that the use of words has to infer legal meaning from them, careful legislation has not been done and therefore, proper attention to this concept in the form of a separate and special law is necessary.

Notes

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5. The Consumer Protection from Unfair Trading Regulations 2008 (cput).
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- Act of Electronic Commerce Law 1382.
- The Law to Protect Geographical Indications, passed in 1383.
- The Law on Patents, Industrial Designs and Business Signs Act 1386.
- The Law of the Union System adopted in 1392.

